LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
JUL 30 1958
JOHN T. FEY, Clerk

No. 234

In the Supreme Court of the United States

OCTOBER TERM, 1958

FEDERAL TRADE COMMISSION, PETITIONER

v.

MANDEL BROTHERS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

J. LEE RANKIN,
Solicitor General,
VICTOR R. HANSEN,
Assistant Attorney General,
DANIEL M. FRIEDMAN,
ERNEST L. FOLK, III,
Attorneys,
Department of Justice,
Washington 25, D. C.

EARL W. KINTNER,
General Counsel,
JAMES E. CORKEY,
Assistant General Counsel,
Federal Trade Commission,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
The invoicing violations	4
The labeling violations	5
Reasons for granting the writ	7
Conclusion	14
Appendices	15

CITATIONS

Cases:	
Black v. *Magnolia Liquor Co.*, 355 U. S. 24	8
De Gorter v. *Federal Trade Commission*, 244 F. 2d 270	10
Federal Trade Commission v. *Morton Salt Company*, 334 U. S. 37	11
Federal Trade Commission v. *Ruberoid Company*, 343 U. S. 470	11
Fenton v. *Thorley & Co.*, [1903] A. C. 443	10
Knowlton v. *Moore*, 178 U. S. 41	10
Local 167, Int'l Brotherhood of Teamsters v. *United States*, 291 U. S. 293	13
May Department Stores Company v. *National Labor Relations Board*, 326 U. S. 376	12
National Labor Relations Board v. *Express Publishing Co.*, 312 U. S. 426	12
Siegel Company, Jacob v. *Federal Trade Commission*, 327 U. S. 608	11
United States v. *American Trucking Ass'ns*, 310 U. S. 534	10
White v. *United States*, 191 U. S. 545	10

474233—58——1

Statutes:

Fur Products Labeling Act, 65 Stat. 175, 15 U. S. C. 69, *et seq*. Page 2, 7, 10, 11, 13, 24
Section 2(f) 3, 7, 24
Section 3 7, 10, 24
Section 3(a) 3, 24
Section 3(b) 3, 25
Section 4 4, 13, 25
Section 4(2) 4, 5, 6, 13, 26
Section 5(a) 26
Section 5(b) 3, 4, 27–28
Wool Products Labeling Act, 15 U. S. C. 68, *et seq.*:
Section 4(2) 14

Miscellaneous:

Hearing before the House Committee on Interstate and Foreign Commerce on H. R. 3734, 80th Cong., 2d sess. 10
S. Rep. No. 78, 82d Cong., 1st sess. 9, 10

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. —

FEDERAL TRADE COMMISSION, PETITIONER

v.

MANDEL BROTHERS, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the Federal Trade Commission, prays that a writ of certiorari issue to review that part of the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above cause on April 1, 1958, which modified the Commission's cease-and-desist order.

OPINION BELOW

The opinion of the Court of Appeals (Appendix A, *infra*, pp. 15–21) is reported at 254 F. 2d 18.

JURISDICTION

The judgment of the Court of Appeals modifying the Commission's order, and affirming it as modified, was entered on April 1, 1958 (Appendix B, *infra*, p. 22). The court's final decree, enforcing the order as modified, was entered May 8, 1958. The time for

filing a petition for a writ of certiorari was extended by Mr. Justice Clark on June 25, 1958 to July 30, 1958 (Appendix C, *infra*, p. 23). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether sales at the retail level are outside the scope of the provisions of the Fur Products Labeling Act prohibiting false and deceptive invoicing.

2. Whether the Federal Trade Commission, in issuing cease-and-desist orders against failure to label fur products properly, is confined to proscribing the the precise labeling omissions which it found.

STATUTE INVOLVED

The relevant portions of the Fur Products Labeling Act, 65 Stat. 175, 15 U. S. C. 69, *et seq.*, are set forth in Appendix D, *infra*, pp. 24–28.

STATEMENT

On October 27, 1955 the Federal Trade Commission issued a complaint charging that respondent, which operates a large department store in Chicago, Illinois, had violated the Fur Products Labeling Act (App. 2–8).[1] After full administrative proceedings, the Commission, adopting the examiner's findings (with minor modifications), found that respondent had violated the Act as charged, and entered a cease-and-desist order. The principal violations found were misbranding, false and deceptive invoicing, and false advertising. The Court of Appeals modified the order

[1] "App." refers to the appendix to respondent's brief in the Court of Appeals.

in two important respects, and affirmed and enforced its other provisions. The court eliminated the prohibition against false and deceptive invoicing, on the ground that the Act does not extend to invoices given to retail customers; and it held that the prohibitions against misbranding were too broad.

Section 3 (a) of the Act (15 U. S. C. 69a (a)) makes it unlawful to sell "in commerce * * * any fur product which is misbranded or falsely or deceptively advertised or invoiced * * *"; and Section 3 (b) (15 U. S. C. 69a (b)) makes it unlawful to sell "any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced * * *." Section 5 (b) (15 U. S. C. 69c (b)) provides that a fur product or fur is falsely or deceptively invoiced if the "invoice" does not show (A) the name of the animal that produced the fur; where applicable, (B) that the product contains used fur, (C) contains bleached, dyed, or artificially colored fur, or (D) is composed in whole or substantial part of paws, tails, bellies, or waste fur; (E) the "name and address" of the person issuing such invoice; and (F) the country of origin of any imported furs. Section 2 (f) of the Act (15 U. S. C. 69 (f)) defines "invoice" as "a written account, memorandum * * * which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee * * *,

or any other person who is engaged in dealing commercially in fur products or furs."

Section 4 of the Act (15 U. S. C. 69b) provides that a fur product is misbranded if (1) it is "falsely or deceptively labeled * * * or identified," or (2) there is not affixed a label setting forth six specific categories of information which are substantially identical to those which Section 5 (b) requires to be set forth in the invoice (except that Section 4 (2) (E) requires the label to show the name of the person who manufactures the fur product, rather than the "name and address" of the person issuing the invoice).

The Invoicing Violations

The Commission found that respondent had violated the invoicing provisions of the Act because its invoices did not show its address and, in several instances, failed to set forth the correct name of the animal producing the fur and did not disclose that the fur was bleached, dyed, or otherwise artifically colored. The Commission rejected respondent's contention that the Act is not applicable to retail invoicing. It stated (App. 147) that "a prime purpose of the Act was to eliminate deceptive invoicing at the consumer level"; that it has "consistently construed the statute's proscriptions against false and deceptive invoicing to extend to invoices or sales slips furnished by retailers to the purchasing consumer"; and that respondent's contention would "render the Act ineffective in a major respect."

The Court of Appeals eliminated the prohibitions relating to invoicing, on the ground that under the

statute a sales slip given to a retail customer is not an "invoice" (Appendix A, *infra*, pp. 19–20). The court ruled that an invoice "must be something issued in connection with a commercial dealing to a purchaser or any *other* person who is engaged in *dealing commercially*" in furs, and that, "[u]nder no circumstances is a sales slip given to a customer by the retailer * * * issued in connection with a commercial dealing." The court refused to consider the legislative history of the Act, on the ground that when statutory language is "clear and unambiguous its legislative history cannot control the interpretation * * *."

The Labeling Violations

The Commission found the following violations of the Act's labeling requirements: 12 instances of failure to label the product with the correct name of the animal producing the fur (Section 4 (2) (A)), 15 instances of failure to disclose that the product was bleached, dyed or otherwise artificially colored (Section 4 (2) (C)), and 58 instances of failure to show the country of origin of imported furs (Section 4 (2) (F)). The Commission further found 187 violations of its rules which provide additional labeling requirements.[2] The Commission held (App. 158), however, that there was "no evidence that the labels affixed to respondent's fur products were deficient in that they failed to disclose that the fur products were

[2] In 9 instances, required information was improperly set forth in abbreviated form; in 59 instances, non-required information was mingled with required information; and in 119 instances, required information was set forth in handwriting.

composed of used fur, or were composed of paws, tails, bellies, or waste fur, or that they failed to disclose respondent's name * * *."

Although the examiner recommended that the cease-and-desist order be limited to the three categories of information found to have been omitted, the Commission's order directed respondent to cease and desist from "Misbranding fur products by: * * * Failing to a affix labels to fur products showing" the six categories of information required by Section 4 (2) (App. 159–160). The Commission stated (App. 154) that "[u]nder the Act a fur product is misbranded * * * unless it has attached to it a label setting forth clearly and conspicuously all the data indicated as necessary to be included thereon by Section 4 (2)"; that the subsections "do not deal with separate violations in and of themselves" (*ibid.*); and that "in any case in which it is found that the labeling * * * requirements * * * have not been fully complied with, the appropriate conclusion is that the fur products in connection with which the deficiencies have occurred have been misbranded * * * and that the appropriate order to be issued in correction of the offense is one requiring cessation of the practice, namely, the misbranding * * * by failure to attach proper labels * * *" (App. 155).[1]

[1] The Commission reached the same conclusion with respect to the scope of the order directed against invoicing violations. It enjoined respondent from failing to furnish invoices containing the six categories of information required by the Act (App. 160), even though it found (App. 158) that there was "no evidence" that certain of those categories had been violated. Since the Court of Appeals held that the part of the

The Court of Appeals struck from the order the prohibitions against the three categories as to which no violations were found (Appendix A, *infra*, pp. 18–19). Although stating it accepted the "doctrine that a cease and desist order does not have to be limited to the illegal practice in the precise form it is found to exist or that those caught violating the Act must expect some fencing in," the court refused to "affirm an order requiring one to cease and desist from doing that which the Commission specifically found it did not do."

REASONS FOR GRANTING THE WRIT

1. In holding that sales slips given by retailers of fur products to the ultimate consumer are not "invoices" subject to the disclosure requirements of the Fur Products Labeling Act, the court below has adopted a construction of the Act—a clearly erroneous construction, we believe—which, unless reversed by this Court, will seriously frustrate a principal purpose of the Act and substantially limit the protection against misbranding afforded by Congress to purchasers of fur products.

Section 3 makes it unlawful (*inter alia*) to sell "any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is * * * falsely or deceptively * * * invoiced * * *." Section 2 (f) of the Act defines "invoice" as "a written account, memorandum, list, or

order dealing with the invoicing violations was beyond the Commission's statutory authority, it did not reach the question of its scope.

catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs." The court below held that under this definition an "'invoice' must be something issued in connection with a commercial dealing to a purchaser or any *other* person who is engaged in *dealing commercially*"; and that "[a]n invoice is not brought down to the retail level by this section," since a "sales slip given to a customer by a retailer" is not "issued in connection with a commercial dealing" (Appendix A, *infra*, pp. 19–20).

We submit, however, that the statutory definition of "invoice" does cover sales slips at the retail level. Giving the words of the definition their ordinary meaning, the ultimate consumer who purchases and wears a fur product is a "purchaser," and the sale to such a consumer is a "commercial dealing." Furthermore, the phrase at the end of the definition, "who is engaged in dealing commercially in fur products or furs," does not, in our view, modify and limit the word "purchaser." Although the Commission relies primarily on the usual usage of the statutory terms, it should also be noted that "[w]e deal here with remedial legislation whose language should be given hospitable scope." *Black* v. *Magnolia Liquor Co.*, 355 U. S. 24, 26.

In any event, we believe that the court plainly erred in holding that the definition of "invoice" is so "clear and unambiguous" as to preclude resort to legislative history. That history evidences Congressional concern with protecting the ultimate consumers of furs against the evils of various false and deceptive practices, and strongly supports the conclusion that the Act's invoicing provisions are applicable at the retail as well as at the manufacturing and wholesale levels.

The Senate Report stated that one of the two purposes of the bill is "[t]o protect *consumers* and scrupulous merchants against deception and unfair competition resulting from the misbranding, false or deceptive advertising, or *false invoicing* of fur products and furs * * *" (S. Rep. No. 78, 82d Cong., 1st sess., p. 1, emphasis added). The report also stated that "fur when offered and sold to the buying public often has had its natural appearance materially changed by processing and dyeing" (*id.*, p. 2); that it "is difficult and generally impossible for the American housewife to know what she is buying unless reliable factual information is disclosed to counteract the impression left with her as a result of the deceptive condition of the particular fur article of wearing apparel" (*ibid.*); and that the prohibitions contained in the Act "will effectively check types of advertising, *invoicing*, and labeling which by implication are calculated to mislead one as to the habitat of the animal, a matter regarded by many consumers as having considerable bearing on the quality and character of

furs" (*id.*, p. 4).[4] The aim of Congress to protect consumers against false invoicing as well as misbranding and false advertising is also shown by the title of the statute (65 Stat. 175): "An Act to protect *consumers* and others against misbranding, false advertising, and false *invoicing* of fur products and furs" (emphasis added.)[5]

In view of this clear Congressional design to protect consumers of furs and fur products, it would be anomalous for Congress to have made the advertising and mislabeling prohibitions applicable to retail transactions—as Section 3 has done (*De Gorter* v. *Federal Trade Commission*, 244 F. 2d 270 (C. A. 9))—and yet to have denied retail customers the same protection against false invoicing. The Commission "has consistently construed the statute's proscriptions against false and deceptive invoicing to extend to invoices or sales slips furnished by retailers to the purchasing consumer" (App. 147).[6] As the Commission

---

[4] At the hearings on a predecessor bill (substantially identical with that which became the Fur Products Labeling Act), there was extensive discussion of the need for requiring that invoices at the retail level affirmatively disclose pertinent information. Hearing before the House Committee on Interstate and Foreign Commerce on H. R. 3734, 80th Cong., 2d sess., at pp. 119, 120, 123, and 156–157.

[5] The title of a statute may be considered in resolving ambiguity. *Knowlton* v. *Moore*, 178 U. S. 41, 65; *White* v. *United States*, 191 U. S. 545, 550. See also *Fenton* v. *Thorley & Co.*, [1903] A. C. 443, 447 (H. L.)

[6] This "'contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new,'" is "entitled to great weight." *United States* v. *American Trucking Ass'ns*, 310 U. S. 534, 549.

pointed out (*ibid.*), a contrary construction would "defeat the congressional declaration of purpose and render the Act ineffective in a major respect."

The question whether the Act applies to retail invoicing is important in its administration and enforcement. Since the Act became effective in 1952, the Commission has issued more than 100 complaints charging false and deceptive invoicing at the retail level; in addition, there are currently outstanding 94 Commission orders relating to retail invoicing, and more than 35 pending administrative proceedings involving the same activity.

2. The court below also erred in holding that Commission cease-and-desist orders under the Fur Products Labeling Act may prohibit only the particular types of misbranding (and, by the same reasoning, of false invoicing) found to have been committed.

This Court has consistently recognized that the Commission has "wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" disclosed in its proceedings. *Jacob Siegel Company* v. *Federal Trade Commission*, 327 U. S. 608, 611; *Federal Trade Commission* v. *Ruberoid Company*, 343 U. S. 470; cf. *Federal Trade Commission* v. *Morton Salt Company*, 334 U. S. 37, 51–52. The Commission is "not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past." *Federal Trade Commission* v. *Ruberoid Company*, *supra*, at 473; see also *May Department Stores Company* v. *National Labor Relations Board*, 326 U. S. 376, 390 (footnote

10, subparagraph 3 (a)). A cease-and-desist order may restrain "other like or related unlawful acts" (*National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 436), as long as such other violations "bear some resemblance to that which the * * * [respondent] has committed or * * * danger of their commission in the future is to be anticipated from the course of * * * conduct in the past" (*id.*, p. 437).

Under these standards, the Commission was fully warranted in entering a cease-and-desist order against all six categories of misbranding, even though it found violations involving only three of them. The six categories are closely interrelated, and it is not unjustifiable to assume that one who repeatedly commits violations involving several of the categories is likely, unless restrained, to commit violations involving others. For example, a retailer who frequently failed to disclose that fur is bleached or dyed, as respondent did, may reasonably be expected also to fail to disclose that the product includes used or other undesirable types of fur. The Commission found that respondent had committed 85 statutory violations involving three of the labeling requirements, and also 187 violations of Commission regulations. In the circumstances, a prohibition which also includes the three other labeling requirements cannot be said to have "no reasonable relation to the unlawful practices found to exist." *Siegel* case, *supra*, p. 613. See also *Local 167, Int'l Brotherhood of Teamsters* v. *United States*, 291 U. S. 293.

The fact that Congress, in defining "misbranded" in Section 4 of the Act, specified six categories of required information does not curtail the Commission's "wide discretion" to choose "a remedy deemed adequate to cope with the unlawful practices" (*Siegel* case, *supra*, p. 611)—a discretion which, as we have shown (*supra*, p. 12), authorizes the proscription of "related unlawful acts." The offense which Section 3 condemns is "misbranding" and, as the Commission stated (App. 154), "[u]nder the Act, a fur product is misbranded * * * unless it has attached to it a label setting forth clearly and conspicuously all the data indicated as necessary to be included thereon by Section 4 (2)." The six specified categories of required information, therefore, "do not deal with separate violations in and of themselves, nor do they recognize or excuse misbranding * * * in varying degrees"; they merely amplify the statutory command that there be "attach[ed] to a fur garment an adequate label * * *" (App. 154).

The decision below, if allowed to stand, would handicap the Commission in enforcing not only the Fur Products Labeling Act but also the Wool Products Labeling Act (enacted in 1940). For, as the Commission pointed out (App. 156), if it were limited to requiring disclosure only of the particular categories of information that had not been given, new proceedings would have to be instituted to deal with "subsequent omissions not theretofore resorted to but similarly violative of the public policy expressed in the subsection." In order to avoid such "multiplicity

of actions," the Commission's "long established policy" under the Wool Products Labeling Act has been to include in its orders "prohibitions against failure to disclose on labels all elements of information required by that subsection [Section 4 (2), 15 U. S. C. 68b] even though failure to disclose some elements of information were not involved in various of the cases" (*ibid.*). It has also "generally" followed the same practice with respect to orders under the Fur Act directed against misbranding and false invoicing (*ibid.*).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. LEE RANKIN,
Solicitor General.
VICTOR R. HANSEN,
Assistant Attorney General.
DANIEL M. FRIEDMAN,
ERNEST L. FOLK, III,
Attorneys.

EARL W. KINTNER,
General Counsel,
JAMES E. CORKEY,
Assistant General Counsel,
Federal Trade Commission.

JULY 1958.

APPENDIX A

(Federal Trade Commission Docket 6434)

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 12128 September Term 1957—January Session 1958

MANDEL BROTHERS, INC., A CORPORATION, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

ON PETITION TO SET ASIDE AN ORDER OF THE FEDERAL TRADE COMMISSION. APRIL 1, 1958

Before DUFFY, *Chief Judge,* SCHNACKENBERG and PARKINSON, *Circuit Judges.*

PARKINSON, *Circuit Judge.* The petitioner, Mandel Brothers, Inc., is a Delaware corporation. It owns and operates a large department store in Chicago, Illinois with annual sales of approximately $32,000,000. It has two fur departments, one on the fifth floor and the other in the basement.

The petitioner is here seeking to set aside a cease and desist order entered July 5, 1957 under the Fur Products Labeling Act, Title 15 U. S. C. A. § 69 *et seq.* by the respondent Federal Trade Commission. There are five contested issues.

The first is whether the petitioner's activities constitute interstate commerce subject to the jurisdiction of the Federal Trade Commission.

The parties stipulated that furs and fur products sold by petitioner were shipped to and received by it from outside the State of Illinois. Petitioner's fur department managers testified that they went to New York City ten or twelve times a year to buy furs for their departments and that most of the furs that are sold in the petitioner's store are bought there. There was also evidence that the petitioner advertised in the *Chicago Tribune,* the *Chicago Sun-Times* and the *Chicago American,* all of which, as stipulated by the parties, have interstate circulation and that furs were sold to non-residents of Illinois and sent to an out of state address. The witness Hill, manager of petitioner's fifth floor fur department, testified that Commission's Exhibit 12, a sales slip, had no Illinois sales tax thereon and therefore the goods would have to be delivered outside the State of Illinois. Commission's Exhibits 19 and 20 also show similar sales to residents of Indiana upon which no Illinois sales tax had been charged. Accordingly there was ample evidence in the record from which the Commission could find that the petitioner was engaged in interstate commerce. *DeGorter* v. *Federal Trade Commission,* 9 Cir., 1957, 244 F. 2d 270. The case of *Federal Trade Commission* v. *Bunte Brothers,* 1941, 312 U. S. 349 cited by the petitioner is inapposite in that Bunte Brothers' sales were made exclusively in Illinois.

The second issue is whether the Commission's Rule 44 under the Act is a valid exercise of the authority delegated to the Commission.

Section 8 (a) (1) (b) of the Act authorizes the Commission to prescribe, *inter alia,* such rules and regulations as may be necessary and proper for pur-

poses of the administration and enforcement of the Act.

Section 5 (a) (5) provides:

> "For the purpose of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement * * * which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur * * * contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur; * * *."

We agree with the Ninth Circuit in *DeGorter* when it said, "the intention was to reach all *misrepresentations in advertising,* including those relating to prices and value. If any doubt exists about the matter the clause under consideration indicates the intention to include them. The Commission was right in so interpreting the statute and acted within its powers in promulgating the rule under discussion."

The Commission found that certain fur products sold by the petitioner for $244 were the same ones advertised in the *Chicago Tribune* on October 2, 1954 as "Usually $299 to $399" the net effect of which was to mislead and deceive purchasers as to the amount of savings to be realized. We believe that finding is supported by substantial evidence. Mandel called its manager of the fifth floor fur department as a witness but made no attempt to prove these garments were usually sold at $299 to $399. Petitioner's contention that the issue here is not the regular and usual price of the specific garments sold by Mandel but the regular and usual price of similar or comparable garments fails inasmuch as the customer would make no such distinction. Moreover, there is no evidence in this record that the regular and usual

price of similar or comparable garments was $299 to $399.

The third issue is whether the evidence as to labeling, invoicing, advertising and record-keeping is such as to warrant and support the Commission's cease and desist order.

What we have held as to advertising is dispositive of that question. The evidence of Mandel's fur salon manager that Mandel had no definite records showing the garments that had been sold at the advertised price gives adequate support to the order of the Commission as to inadequate record-keeping.

As to the labeling the Hearing Examiner found that Mandel had not violated subdivisions (B), (D) and (E) of § 4 (2) of the Act and his cease and desist order did not include these subdivisions. The Commission, on appeal, specifically found that there was no evidence as to violations of these same subdivisions but did include them in its cease and desist order. The Supreme Court in its opinion in *Federal Trade Commission* v. *Ruberoid Co.*, 1952, 343 U. S. 470, 473 held that, "the Commission is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past" and also in *Federal Trade Commission* v. *National Lead Co.*, 1957, 352 U. S. 419, 431 "that those caught violating the Act must expect some fencing in." However, here the Commission specifically found that there was no evidence of any violation of subdivisions (B), (D) and (E) of § 4 (2). We find no difficulty in subscribing to the doctrine that a cease and desist order does not have to be limited to the illegal practice in the precise form it is found to exist or that those caught violating the Act must expect some fencing in but we cannot affirm an order requiring one to

cease and desist from doing that which the Commission specifically found it did not do.

The petitioner concedes that it has violated subdivisions (A), (C) and (F) of § 4 (2) and Rules 4 and 29 promulgated under § 8 (a) (2) (b). It attempts to excuse its violations upon the ground that they are technical and trivial. If such an excuse were valid the enforcement of the Act would be virtually impossible. In this we find no merit.

The Commission contends that when Mandel failed to place certain information upon the sales slip given to the consumer that constituted a violation of § 3 (b) of the Act. Petitioner argues that a sales slip is not an "invoice" within the meaning of the Act. The word "invoice" has an accepted meaning in the commercial world. It is a written account or itemized statement of merchandise shipped or sent to a purchaser or consignee with the quantity, value or prices and charges set forth. However, the Fur Products Labeling Act defines the term and we must look to that definition for its meaning.

Section 2 (f) of the Act defines "invoice" as:

> "a written account, memorandum, list, or catalog, *which is issued in connection with any commercial dealing* in fur products or furs, and describes the particulars of any fur products or furs transported or delivered to a purchaser, * * * or any *other* person *who is engaged in dealing commercially in fur products or furs.*" (Our emphasis.)

This statutory definition is plain and unambiguous and to come within its terms an "invoice" must be something issued in connection with a commercial dealing to a purchaser or any *other* person who is engaged in *dealing commercially*. Under no circumstances is a sales slip given to a customer by a re-

tailer a written account, memorandum, list, or catalog issued in connection with a commercial dealing. An invoice is not brought down to the retail level by this section.

The respondent attempts to buttress its position with excerpts from hearings before a congressional committee. However, when the language used in a statute is clear and unambiguous its legislative history cannot control the interpretation as "such aids are only admissible to solve doubt and not to create it." *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company*, 1922, 257 U. S. 563, 589. "In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms." *United States* v. *Shreveport Grain & Elevator Co.*, 1932, 287 U. S. 77, 83. There is no doubt as to the meaning of "invoice" as defined by the statute. It is clearly not a sales slip at the retailer-customer level.

We agree with the Commission that a limiting clause is to be restrained to the last antecedent unless the subject requires a different construction. If the last antecedent were "any person" instead of "any other person" the word "purchaser" might not be limited to one engaged in dealing commercially in fur products or furs. However, when the statute says purchaser or any *other* person who is so engaged the limitation clearly applies to *purchaser*. No other meaning is possible particularly when "invoice" is also defined by the Act as something *which is issued in connection with any commercial dealing* in fur products or furs.

The fourth issue is whether the Commission, having found that there was no evidence of certain violations, properly included prohibition of those violations in its cease and desist order. As the order must be modified and those portions deleted therefrom pursuant to our determination of the third issue consideration of this issue is no longer necessary.

The fifth issue is whether the Commission properly imposed its cease and desist order on Mandel's officers, representatives, agents and employees when only Mandel itself was named in the complaint.

The petitioner is a corporation. A corporation can act only through its agents. This rule of law is so elementary that citation of authorities is certainly not required.

We did hold in *R. J. Reynolds Tobacco Co.* v. *Federal Trade Commission,* 7 Cir., 1951, 192 F. 2d 535, 540 that the Commission was without authority to include officers, agents, representatives and employees in its cease and desist order. We did make a distinction in *Anchor Serum Company* v. *Federal Trade Commission,* 7 Cir., 1954, 217 F. 2d 867, 874. We have given careful consideration to the question and have come to the conclusion that we were in error in *Reynolds.* Accordingly so much of our decision therein as pertains to this question is overruled.

We hold that the Commission did have the power to include in its cease and desist order Mandel's officers, representatives, agents and employees.

The cease and desist order here under review is hereby ordered modified by deleting therefrom subdivisions (b), (d) and (e) of subsection 1 of A and all of B.

The order as modified is AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO 10, ILLINOIS,
Tuesday, April 1, 1958.

Before Hon. F. RYAN DUFFY, *Chief Judge;* Hon. ELMER J. SCHNACKENBERG, *Circuit Judge;* Hon. W. LYNN PARKINSON, *Circuit Judge.*

No. 12128

MANDEL BROTHERS, INC., A CORPORATION, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

PETITION TO SET ASIDE AN ORDER OF THE FEDERAL TRADE COMMISSION

This cause came on to be heard on the petition to review and set aside an order of the Federal Trade Commission, and the transcript of record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the cease and desist order here under review be modified by deleting therefrom subdivisions (b), (d), and (e) of subsection 1 of A and all of B, and the said order as modified is affirmed.

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. —, OCTOBER TERM, 1957

FEDERAL TRADE COMMISSION, PETITIONER,

v.

MANDEL BROTHERS, INC.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 30th, 1958.

/s/ TOM C. CLARK,
Associate Justice of the Supreme Court of the United States.

Dated this 25th day of June 1958.

APPENDIX D

The Fur Products Labeling Act, 65 Stat. 175, 15 U. S. C. 69, *et seq.*, provides in pertinent part as follows:

SECTION 2. As used in this Act—

* * * * *

(f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs. [15 U. S. C. 69 (f)]

SECTION 3.

(a) The introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b), is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(b) The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b), is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(c) The introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur which is falsely or deceptively advertised or falsely or deceptively invoiced, within the meaning of this Act or the rules and regulations prescribed under section 8 (b) is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act. [15 U. S. C. 69a]

* * * * *

SECTION 4.

For the purposes of this Act, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7 (c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

(3) if the label required by paragraph (2) (A) of this section sets forth the name or names of any animal or animals other than the name or names provided for in such paragraph. [15 U. S. C. 69b]

SECTION 5.

(a) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the

animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7 (c) of this Act;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.

(b) For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively invoiced—

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 7 (c) of this Act;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1) (A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur. [15 U. S. C. 69c]

U. S. GOVERNMENT PRINTING OFFICE 1939